

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

PERFECTION BAKERIES, INC.¹

Employer

and

CASE 7-RC-22071

**TRUCK DRIVERS AND HELPERS UNION,
LOCAL UNION 164, affiliated with INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO**

Petitioner

and

LANSING TRANSPORT DRIVERS ASSOCIATION

Intervenor

APPEARANCES:

Phillip L. Carson, Attorney, of Fort Wayne, Indiana for the Employer.
Gerry M. Miller, Attorney, of Milwaukee, Wisconsin for the Petitioner.
Stephen F. Wilson, Attorney, of Lansing, Michigan for the Intervenor.

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,² the undersigned finds:

¹ The name of the Employer appears as corrected at the hearing.

² The Employer and the Petitioner filed briefs which were carefully considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The Petitioner seeks to represent a 13-employee unit of transport drivers employed by the Employer at its Lansing, Michigan facility. The only issue is whether the collective bargaining agreement between the Intervenor and the Employer effectively bars the petition. The Petitioner asserts that there is no bar because the Intervenor is defunct as a labor organization. The Intervenor and Employer assert to the contrary.

The record establishes that on March 5, 2001, 12 of the 13 transport drivers authorized the Intervenor to be their representative for the purpose of collective bargaining and designated a president and three other individuals to serve on their negotiating committee. In late April 2001, the Intervenor and the Employer agreed on the terms of a collective bargaining agreement with the effective dates of April 1, 2001 until April 4, 2003. The agreement was ratified by 11 of the Employer's employees on April 28, 2001. The Employer's vice president of labor relations, James Skurzewski, signed the agreement during the week of June 12, 2001, and the Intervenor's president, Stephen Wilson, signed sometime before June 19, 2001. The Petitioner filed the petition in the instant matter on August 23, 2001.

The Petitioner asserts that the Intervenor is defunct because it has not processed any grievances, collected dues, maintained a bank account, enacted bylaws, or elected stewards. Nevertheless, the record establishes that the Intervenor is able and willing to represent employees as defined in *Hershey Chocolate*, 121 NLRB 901 (1958). In the past six months, the Intervenor negotiated a collective bargaining agreement with the Employer, gathered the membership to ratify the agreement, and attempted subsequent negotiations with the Employer. That the Intervenor has no bank account, bylaws, or stewards and has not collected dues is not dispositive. *Kent Corp.*, 272 NLRB 735 (1994); *Pony Express*, 286 NLRB 1286, 1289 (1987). Moreover, even though the Intervenor has admittedly been "in limbo" since employees signed a June 12, 2001 petition calling for its dissolution, because of their dissatisfaction with the terms of the agreement and their desire instead to be represented by the Petitioner, a "mere temporary inability to function does not constitute defunctness." Furthermore, in seeking

representation by the Petitioner, employees are not motivated by any true defunctness by the Intervenor, but rather by their desire to rid themselves of the recently executed contract. *News-Press Publishing Co.*, 145 NLRB 803 (1964). *Hershey Chocolate*, supra. Prior to the petition, the Intervenor was prepared to appoint a steward to administer the contract and to handle employee complaints under the agreement's grievance/arbitration procedure. Due to the foregoing, the collective bargaining agreement between the Intervenor and the Employer serves as an effective bar to the instant petition.

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.³

Dated at Detroit, Michigan, this 26th day of September, 2001.

(SEAL)

/s/ William C. Schaub, Jr.

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³ Under the provisions of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the **National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **October 10, 2001**.